

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

DEER CREST ASSOCIATES I, L.C., a Utah
Limited Liability Company,

Plaintiff,

vs.

DEER CREST RESORT GROUP, L.L.C., a
Delaware Limited Liability Company, et. al.

Defendants.

MEMORANDUM DECISION AND
ORDER GRANTING PLAINTIFF'S
RULE 56(f) MOTION TO PERMIT
DISCOVERY

Case No. 2:04-CV-220 TS

This matter is before the Court on the Rule 56(f) Motion to Permit Discovery Regarding Claims, filed by Defendants Avalon Deer Valley, LLC, Willamette Landing Development, Inc., and A. Paul Brenneke (hereinafter "Defendants"). Although it is not styled as such, the Court deems Defendant's Rule 56(f) Affidavit of Joel T. Zenger¹ as a Motion to Permit Discovery under Fed. R. Civ. P. 56(f), and will grant said Motion.

Pursuant to Fed. R. Civ. P. 56(f), Defendants request additional time to respond in order to obtain discovery on specific issues of fact. These issues include, among many others, Plaintiff's

¹ Docket No. 21.

cooperation with Defendants on the Deer Crest Project, Plaintiff's alleged failure to execute loan documents, Plaintiff's intent in entering into the Memorandum of Understanding, and Plaintiff's alleged breach of the Operating Agreement and Bud Bailey letter agreement, as outlined in Defendants' counterclaim. Defendants' request is properly supported with affidavits as required by Rule 56(f).² The fact that discovery is not complete is insufficient to obtain a Rule 56(f) continuance.³ However, "unless dilatory or lacking in merit, the motion should be liberally treated."⁴


The Court finds that Plaintiff has properly supported its Rule 56(f) motion and it should be granted. It is therefore

ORDERED the Defendants' Rule 56(f) Motion to Permit Discovery Regarding Claims [Docket No. 21] is GRANTED. It is further

ORDERED that Defendants shall have until December 30, 2005, to complete discovery necessary to respond to Plaintiff's Motion for Partial Summary Judgment. Defendants shall file their opposition to the Motion no later than January 16, 2006.

DATED this 6th day of December, 2005.

BY THE COURT:



TED STEWART
United States District Judge

² See *Jensen v. Redevelopment Agency of Sandy City*, 998 F.2d 1550, 1554 (10th Cir. 1993) (explaining when affidavits properly support a Rule 56(f) motion).

³ *Id.*

⁴ *Id.*